IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 628/2004

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| Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | : | Court's or Judge's orders |
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**CORAM : A.P. Lavande, J.**
**DATED : December 4, 2006**

Heard Mr. Mohta, Advocate for the appellant.

By this appeal, the appellant who is original defendant assails the judgment and decree dated 20.12.2003 passed by 5th Adhoc Additional District Judge, Akola in Regular Civil Appeal No.309/2001 dismissing the appeal against judgment and decree dated 31.10.2001 passed by Civil Judge, Jr. Dn. Akot in Regular Civil Suit No.15/2000.

The respondent-plaintiff filed the above referred suit for eviction against the appellant-defendant for recovery of arrears of rent and damages. The suit was

contested. The trial Court partly decreed the suit, inter alia, directing the defendant to hand over the possession of the suit house to the plaintiff. The appeal preferred against judgment and decree has been dismissed by the lower appellate Court.

Mr. Mohta, learned counsel for the appellant has assailed the decrees passed by both the Courts below, on the following three grounds:-

(1) All the legal representatives of original landlord Harishchandra Pitamberwale have not filed the suit and, therefore, the suit is not maintainable.

(2) All the legal representatives of original tenant Pundlik Pachpor have not been joined as defendants in the suit and, therefore, the suit is not maintainable.

(3) Notice dated 30.11.1999 issued by the respondent-plaintiff before filing the suit was not valid and, therefore, the proceedings for eviction were not maintainable.

I have considered the submissions made by learned counsel vis-a-vis the grounds urged and perused the impugned judgments passed by both the Courts below. The trial Court as well as appellate Court have held that before filing of the suit the proceedings seeking permission before the Rent Controller were filed and in those proceedings the finding has been given that the appellant is the tenant and the respondent is the landlord. The said finding has been confirmed in the appeal preferred by the defendant. Both the Courts below have also considered the effect of non-joinder of other legal representatives of original tenant. I do not find any infirmity in the approach of both the Courts below while rendering the finding against the appellant-defendant. The same is the position insofar as the legal representatives of original landlord is concerned. I do not find any infirmity in the finding given by both the Courts

below in that regard. Insofar as the validity of notice is concerned, the said issue has been considered in paragraph 4 of the order of the trial Court and in paragraph 6 of the judgment of the appellate Court. The finding given by both the Courts below on the issue of notice under section 106 of Transfer of Property Act cannot be said to be perverse to warrant interference in Second Appeal. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

C.A. No.7899/2004

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

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